

GOODBURN AND WIFE }

vs. }

STEVENS ET AL. }

JULY TERM, 1849.

[PARTNERSHIP—ELECTION OF INTEREST OR PROFITS—DOWER—AGE OF WIDOW—
 ARREARS OF DOWER—PAYMENT OF MORTGAGE—TRUSTEE'S COMMISSIONS.]

WHERE one of several partners dies, if the surviving partners continue the trade or business, it is at their own risk ; and they will be liable, at the option of the representatives of the deceased partners, to account for the profits made thereby, or to be charged with interest on the deceased partner's share of the surplus, besides bearing all losses.

Where the administratrix of a deceased partner filed a bill against the surviving partners, alleging that the business of the partnership had been carried on under the old name, and large profits made, and praying that her intestate's share of such profits might be paid over to her, as administratrix,
 HELD—

That by such a proceeding, she had elected to claim profits, and not interest ; and, that a party cannot claim profits for one period and interest for another.

The real estate of a partnership, though regarded in a court of equity as personal estate for all partnership purposes ; yet, in the absence of an express or implied agreement, indicating an intention to convert it into personal estate, will, when the claims against the partnership have been satisfied and the partnership accounts adjusted, be treated in a court of equity, as at law, as real estate, and be subject to the dower of the widow of a deceased partner.

It having been decided that a widow was entitled to an allowance out of the proceeds of sales of partnership lands, in lieu of dower ; and the husband having died in 1825, and the sale not having been made until 1845, it was
 HELD—That the age of the widow at the death of her husband should be taken, in fixing her allowance under the chancery rule.

The right of a widow to dower in partnership property, is suspended until the purposes of the partnership are accomplished, by paying all claims against it, and adjusting the accounts. She cannot, therefore, claim rents and profits from the death of her husband.

A mortgage debt must be paid out of the personal estate of the mortgagor ; and, if that is not adequate, then the balance should be paid out of that portion of the real estate contained in the mortgage.

When a court of equity has control of both personal and real estate, it will, in order to prevent circuity and save expense and delay, apply them in the order in which, as between the heir and executor, they are liable.

When several sales are made at different times, the commissions of the trustee should be calculated upon each sale separately, and the sales are not to be treated as if made at one time.